IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2465 of 1998
with
CRIMINAL MISC.APPLICATION No 2467 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KEKI PATEL OF SINGAPORE AIR LINES LTD.

Versus

DHANESH BADARMAL JAIN PROP. OF M/S. MAHAVIR APPARELS

Appearance:

1. Criminal Misc.Application No. 2465 of 1998
   MR SA DESAI for Petitioner No. 1
   MR PARESH M DAVE for Respondent No. 1
   MR AMAR P DAVE for Respondent No. 1
   RULE UNSERVED for Respondent No. 2
   NOTICE SERVED for Respondent No. 3
   MR VM PANCHOLI, Ld. APP for Respondent No. 4
2. Criminal Misc.Application No. 3671 of 1998
   MR VARSHAL M PANCHOLI for Petitioner No. 1
   NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 16/07/2002

COMMON C.A.V. JUDGEMENT

#. These two applications under Section 482 of the Code of Criminal Procedure, 1973, [for short "Code"] have been preferred by the concerned petitioners for quashing and setting aside two private complaints filed on 22/06/1998 by contesting respondent - Dhanesh Badarmal Jain being Criminal Case Nos.2264 and 2263 of 1998 respectively before the learned Metropolitan Magistrate, Court No.9 at Ahmedabad City against the present petitioners for offences punishable under Sections 407, 420, read with Sections 34 and 114 of the Indian Penal Code.

#. So far Misc. Criminal Application No.2465 of 1998 is concerned, the concerned complainant has filed Criminal Case No.2264 of 1998 stating that the said complainant is carrying on business as sole proprietor of the concern known as Mahavir Apparels at Ahmedabad. According to him, he is carrying on business as garment manufacturer and exporter and, therefore, he exports the consignments to various countries from time to time.

#. It is further contended in the complaint that the present petitioners along with other accused persons have also been managing affairs in the names of M/s.Singapore Air Lines Limited, M/s.Trans Arabia Transport (P) Limited and M/s.New Glob Air Services (P) Limited at the address shown in the complaint.

#. It is alleged in the said complaint that the present petitioners along with other accused persons had undertaken to carry complainant's goods [material of accessories for readymade garments] as detailed in complainant's Invoice dated 29/04/1997 produced with the said complaint having a value of Rs.7,67,232-00 [equivalent 119,830-00 French Frac] [The said Invoice is produced in the complaint]. It is further alleged in the complaint that the present petitioners undertook to carry and deliver the said consignment "TO ORDER" as instructed by the complainant with the stipulation that on payment of the value of the consignment by the notified party i.e. M/S. BANKCO S.A. of France through the Bank and on presentment of the consignee's Airway Bills to the accused, the goods of the Invoice would be delivered to the notified party namely M/s.BANKCO S.A. by the accused. In other words, the petitioners were required to see that the said purchaser should get released the original Airway Bills from the Bank after making payment of consideration of the consignment to the said Bank and

on presentment of the said original Airway Bills, the consignment was required to be delivered to the purchaser.

#. It is further alleged in the said complaint that the accused persons by agreeing and accepting the invoice dated 29/04/1997 for goods material of Ladies Knitted T-shirts of the value stated hereinabove and promising and assuring the complainant by their Airway Bills dated 02/05/1997, induced the complainant deliver to and entrust to them the said goods material of the complainant on clear stipulation incorporated in their Airway Bills that the material would be delivered only on presentation and production of the Original Airway Bills and release order from the Bank of the notified party i.e. TO ORDER and was to be delivered to the notified party only thereafter.

#. The complainant has also alleged in the said complaint that the accused persons carried the said consignments from Bombay to Paris. That, however, the complainant came to know that the said accused persons have delivered the said consignments to the said purchaser without production of Original Airway Bills release order obtained from their Bank on payment of the consideration of the said consignments. That this has been done against the clear understanding and agreement between the parties. It is further alleged that the accused persons were bound to see that Original Airway Bills and other relevant documents are produced before handing over of the consignments to the said purchaser. It is also alleged in the complaint that the said accused, their servants and agents have instead of discharging the aforesaid statutory duties and contractor obligations cast upon them, dishonestly delivered the said consignments to the said purchaser without receiving original documents. That by the aforesaid act, they have committed an offence punishable under Section 407 read with Sections 34 and 114 of the Indian Penal Code.

#. On the receipt of the aforesaid complaint, the learned Magistrate recorded the verification of the complainant on oath and, thereafter, directed that the complaint be registered and summons be issued against the accused persons for the offence punishable under Section 407 of the Indian Penal Code.

#. Feeling aggrieved by the aforesaid order of the learned Magistrate, the petitioners being one of the accused persons in the said complaint has come before this Court under Section 482 of the said Code. It has

been contended here that it is not true that the goods were required to be delivered only on presentation of the Original Airway Bills. That even if, there was an agreement as alleged by the complainant, then also the present case would not be treated to be a case of criminal breach of trust. That the institution of the complaint by original complainant is an abuse of process of the Court, since at the best there would be a civil dispute between the parties not involving any ingredients of any criminal offences. That even the complaint does not disclose any offence and no offence is made out against the present petitioners. That the consignments in question are in fact delivered by the present petitioners to the purchaser and, there is no dispute about the said position, which clearly indicates that there is no question of criminal breach of trust. That the issuance of process in the said complaint on a mere reading of the complaint itself would vitiate the entire proceedings, as it indicates that at the best there would be a civil dispute between the parties not involving any ingredients of criminal offences.

#. It is further alleged in this application that the consignment was given to the petitioners at Bombay for being delivered at Paris in France and, therefore, even if, some offence is committed, the Court at Ahmedabad cannot entertain the said complaint of the complainant.

##. On the aforesaid contentions, the petitioners have prayed that the present application of the present petitioners be allowed and the aforesaid complaint being Criminal Case No.2264 of 1998 be quashed and set aside.

##. On receiving of the aforesaid application, notice was issued. Mr.S.V.Raju, learned advocate appears for the original complainant and Mr.V.M.Pancholi, learned APP appears for the respondent - State. I have heard the learned advocates for the parties and have perused the papers.

##. So far as the entrustment of consignment is concerned, it is not very much in dispute. However, the present petitioners have attached a copy of the Original Airway Bills at page-15 to the present application. On the strength of the said Original Airway Bills, the learned advocate for the petitioners has argued at length that as per the said Airway Bills at page-15, the consignment was handed over to the consignee and, therefore, nothing wrong has been committed by the present petitioners. It is also argued that it was a statutory duty of the original complainant to prepare the

airway Bills and in preparing the airway Bills, the aforesaid agreement "not negotiable" have been specifically introduced in the said airway Bills and, therefore, it was the duty of the petitioners to deliver the consignment in question to the purchaser without waiting for anything.

##. Let us accept that the airway Bills has been prepared by the original complainant and that airway Bills was in fact statutorily required to be prepared by the original complainant. At the same time, it is also a fact that on left hand side of the said Bills at page No.15, there is a clear indication that the consignment would be delivered TO ORDER.

##. Undisputedly, when there is an indication as "TO ORDER", the airway Bills becomes negotiable and there is no dispute that in that case that the present petitioners would not have delivered the consignment to the purchaser without following the contractual requirement.

##. It is true that on one hand, it is mentioned that the airway Bills will not be negotiable, on the other hand there is a mention of TO ORDER, both may not stand together simultaneously.

##. At this stage, it is required to be considered that as per the arguments of the learned advocate for the original complainant, the complainant has been dealing with the present petitioners since long. It is also submitted at the Bar by the learned advocate for contesting respondent that there was a very consistent and prolonged practise custom and usage of the business of air lifting of consignments of the complainant through the present petitioners. Learned advocate for the petitioners has also made it clear at the Bar that in all past dealings the present petitioners had collected the value of the consignment before handing over the consignment to the purchaser. It has also been made clear at the Bar by the learned advocate for contesting respondent that there is a consistent practise and custom that the goods was entrusted to the present petitioners for being carried from one country to another. That at the same time the original airway Bills would be sent to the concerned bank. That the purchaser would be required to pay the amount of the Bills to the Bank and on such payment, the Bank would release the original airway Bills to the purchaser. That on receipt of the said airway Bills the purchaser would submit it to the present petitioners and on presentment of the original airway Bills, the present petitioners would deliver the

consignment to the purchaser.

##. During the course of arguments this aspect of the case has not disputed at all. Learned advocate for the petitioners has never argued that this was not a custom usage or practice for carrying the goods from one country to another. At the same time, it has not been made clear on behalf of the petitioners that as to why the said practice, usage or custom has not been followed in the present case.

##. The only contention raised by the learned advocate for the petitioners is that since the airway Bills was not negotiable, the present petitioners had delivered the consignment to the consignee and there was no criminal intention on the part of the present petitioners.

##. As stated above, when there was a consistent practice, usage and custom for effecting delivery of consignment as aforesaid, then there was nothing on record to show that as to why the said practice usage and custom have been bye-passed or as to why they have been given a go-bye by the present petitioners in the present case.

##. However, since there is a contention raised on both the sided as to the aforesaid agreement between the parties, it would be a matter of factual dispute which can be entertained and disposed of by the trial Court on appreciation of evidence only. This Court cannot go into disputed facts. It is more so, when similar other airway Bills have been produced on record and dispute has not been raised with respect to the said airway Bills. This would prima facie show that there was a practice usage or custom between the parties for the delivery of consignments as alleged by the original complainant.

##. Then it is useful to note here that this is not a simple case of delivery of consignment without any ingredients of any criminal offences. The original complainant has definitely alleged in so many words that this has been done dishonestly by the present petitioners. This would prima facie show that this was not a case of mere negligence or some error on the part of the present petitioners involving mere civil dispute between them. That in that case, the parties should be left to produce evidence before the trial Court on the point as to whether there was any dishonesty on the part by the present petitioners. When such disputed questions of facts are involved, then in that event a complaint filed before a Court or a FIR filed before a police

station cannot be quashed by exercising inherent jurisdiction under Section 482 of the said Code.

##. Moreover, it is well settled that the complaint or FIR, as the case may be, is required to be read as a whole and if some offence is made out on a bare reading of the complaint itself then in that event, the complaint cannot be quashed very lightly. Quashing of a complaint, FIR would seriously and adversely affect the report of a complainant since his or her right to prosecute the other side would be brought to an end by exercising inherent jurisdiction under Section 482 of the Code for quashing the FIR or the complaint as the case may be. Therefore, while exercising inherent jurisdiction the Court must be extra vigilant and this kind of jurisdiction should be exercised very slowly.

##. In view of the aforesaid factual dispute, it would not be open to this Court to decide as to whether or not there was an agreement between the parties for carrying the goods from the Indian Territory and for delivering the same to a place away from the territory, only on production of the original Airway Bills, which could be had by the consignee only on payment of Bills amount.

##. Learned advocate for the petitioners has also come out with a case that the consignment was delivered to the petitioners at Mumbai and, thereafter, a consignment was actually delivered by the petitioners to the original consignee in a different country. Therefore, cause of action has not arisen at Ahmedabad for filing the present application at Ahmedabad. That, therefore, the complaint against the present petitioners are barred by the principles of territorial jurisdiction.

##. A question of jurisdiction may not be a pure question of law in all cases. In some cases factual aspects do arise and they are required to be taken into consideration. Therefore, it would not be proper on the part of this Court to quash and set aside the complaint in question without considering the aforesaid factual aspect of the case. In that event, this Court will not be able to appreciate the factual situation and, therefore, it cannot be said that the complaint is ex-facie barred on account of territorial jurisdiction.

##. It would be open to the original accused persons to raise this question of territorial jurisdiction before the trial Court when the trial commences and on appreciation of evidence before the trial Court, the trial Court will certainly decide the issue of

territorial jurisdiction of the Court concerned. However, I am not inclined to allow the application and quash the complaint on the ground of jurisdiction.

##. Learned advocate for the petitioner has also argued at length that the consignment was required to be delivered to the consignee and the petitioner has delivered the consignment to the consignee and, therefore, no offence can be said to have been made out, in view of the provisions of Section 10 of the Carriers Act, 1865. In support of such an argument, the learned advocate for the petitioner has shown a decision of this Court in the case of Saurashtra Ceramic Industries & Anr. v. Sadhana Transport Co., reported in 1998 (3) GLR 1929. On going through the said decision, it becomes clear that the said decision will not apply on the facts of the case before us. It is required to be considered that the said matter was disposed of by this Court on appreciation of the provision made in Section 10 of the Carriers Act, 1865. It is also required to be considered here that in the present case, there is a clear allegation in the complaint itself that the present petitioners have acted dishonestly. The said averment does not appear to have been raised in the case under citation and, therefore, also the said decision cannot come to the rescue of the petitioners.

##. Learned advocate for the petitioners has cited good number of decisions in support of his arguments. It would be worthwhile to refer to the same in a brief manner so as to complete the judgment.

##. The first decision shown by him is in the case of Trilok Singh and others v. Satya Deo Tripathi, reported in AIR 1979 Supreme Court 850. The said decision apparently refers to a hire purchase agreement wherein there was a clear stipulation that in case of default in payment of instalment, the vender will be at liberty to take possession of the property covered by the hire purchase agreement. Therefore, it was held that when the possession of the said property was taken by the vender in accordance with the hire purchase agreement, it could not be treated a criminal action on the part of the vender against the purchaser.

##. Another decision referred to by the learned advocate for the petitioners is in a case of Hari Prasad Chamaria v. Bishun Kumar Surekha and others, reported in AIR 1974 Supreme Court 301. It was a case for an offence punishable under Section 420 of the Indian Penal Code. In that case, the appellant intending to start business,

gave in full faith a large amount to respondents for the same. The respondents started business in their own name and refused to render accounts or return money. A question arose as to whether the respondents could be criminally liable under Section 420 of the Indian Penal Code. On appreciation of fact, the Hon'ble Supreme Court found that even assuming, prima facie all the allegations in the complaint to be true, they merely amount to a breach of contract and could not give rise to criminal prosecution. Here it is to be seen that as said above, there is a clear allegation of dishonest dealing made in the complaint, which shows that there is some averment of criminal action alleged against the petitioners and it may be a case of some sort of a foul play between the petitioners and the consignee. It is true that the consignee is not made an accused, nevertheless, the fact remains that the averments of dishonest act has been alleged in the complaint itself. Moreover, it is noted that the petitioners as well as respondents have been dealing with similar transaction since long and there is an allegation that there was usage, practice, convention and tradition, that the goods would be entrusted to the consignee only on production of the original Airway Bills by the consignee. Undisputedly, the consignee could get original Airway Bills, only when the consignee clears the dues of the said consignment through the Bank and the Bank would release the original Airway Bills only when the consideration of the said consignment, is cleared by the consignee. When the parties have been dealing with in this field with the aforesaid mutual understanding, consent, conventions, traditions and trade usage, then in that case, it is not explained and hence that understood as to why the present petitioners took a different way while dealing with the consignment in dispute. Therefore, such a factual dispute can be entertained only on appreciation of evidence. Therefore, at present, it cannot be said here at the point that there is a simple civil dispute between the parties involving no criminal ingredient at all.

##. In P.K.Das and others v. Jaysukhlal Mahashanker, reported in 1983 (2) GLR 941, again it has been said that while issuing summons or bailable warrants, the Court should apply its mind in order to ascertain if any criminality has been involved in the complaint itself.

##. In Madhavrao Jiwaji Rao Scindia and another etc. v. Sambhajirao Chandrojirao Angre and others, etc. reported in AIR 1988 Supreme Court 709, the matter related to criminal breach of trust. However, the High Court, while

quashing the criminal proceedings in exercise of the powers under Section 482 of the Code, observed that the alleged breach of trust constituted only civil wrong and the said decision was upheld by the Supreme Court. When allegations themselves lead, us to believe, prima facie, that there is only civil wrong then in that event, naturally, the complaint has to be quashed without any hesitation. In the present case, the facts are different and, therefore, the said decision will not apply to the fact of the case before us.

##. In State of U.P. v. R.K.Srivastava, reported in AIR 1989 Supreme Court 2222, it has been clearly observed that the FIR on its face value did not constitute any offence and, therefore, the criminal proceeding instituted on the basis of such FIR was found to be liable to be quashed. When the FIR itself does not lead to any criminal offence then in that event, the Court has no option but to quash the proceedings on the basis of such FIR.

##. In Nageshwar Prasad Singh alias Sinha v. Narayan Singh and another, reported in (1998) 5 Supreme Court 694, again, it was a matter of dispute of civil nature and, therefore, the criminal proceedings were quashed.

##. In M/s.Pepsi Foods Ltd. and another v. Special Judicial Magistrate and others, reported in AIR 1998 Supreme Court 128, the complaint was filed for the offence punishable under the provision of Prevention of Food Adulteration Act. On appreciation of the fact enumerated in the complaint, no material was found to show that the appellant accused were manufacturers holding licence for manufacture of offending articles and, therefore, the complaint and preliminary evidence made out no case against appellant-accused and, therefore, the complaint was liable to be quashed. This was again a matter disposed of on appreciation of the allegations made in the complaint and, therefore, it involved question of fact alleged in the complaint itself. The matter has not been disposed of on any principles of law.

##. In Central Bureau of Investigation, New Delhi v. Duneans Agro Industries Ltd., Calcutta, reported in AIR 1996 Supreme Court 2452, again the matter involved civil dispute and, therefore, the criminal complaint was required to be quashed.

##. In Narendra Pratap Narain Singh and another v. State of U.P., reported in AIR 1991 Supreme Court 1394,

the prosecution case of forging bills and receipts and using them as genuine was not held to be true by High Court and the amount in question was deposited by the accused persons before investigation. Therefore, it was found that the charge for the offence punishable under Section 409 of the Indian Penal Code could not be sustained. This was a matter disposed of on appreciation of fact situation in that particular case.

##. In Meeta Jain v. State of Gujarat and another, reported in 1998 (2) GLR 1057, the matter related to commercial transaction between complainant and accused. On appreciation of the factual allegations, this Court found that the complaint, prima facie, did not disclose any offence and, therefore, the proceedings were quashed. In the case on hand, the facts are different. There are allegations of dishonest dealing by the petitioners and, therefore, the respondent - complainant is required to be given an opportunity to prove the said allegations. That can be done only if the original complainant is permitted to lead evidence. The complainant can prove the allegations made in the complaint by direct evidence, the complainant can also prove the said allegations by circumstantial evidence. Even the conduct in the past dealing the usage and commercial convention, etc. could also be relevant for the purpose of this decision in the matter. This can be done only when the matter goes for a trial.

##. In Sardar Singh v. State of Haryana, reported in AIR 1977 Supreme Court 1766, it has been observed that mere failure or omission to return property is not sufficient to constitute an offence punishable under Section 409 of the Indian Penal Code. This would again be a matter of factual dispute and, therefore, the principle can govern the case before us only if on appreciation of evidence on record, the Court finds that no criminal ingredients are involved in the case.

##. In Harjeet Singh Ahluwalia v. State of Punjab and another, reported in 1986 Cri. L.J. 2070, the matter related to lack of territorial jurisdiction of Court. Here the matter is at quashing stage and it is required to be considered that the parties can lead evidence before the trial Court and the trial Court on appreciation of evidence has to find as to whether the alleged offence, falls within its jurisdiction. If the Court finds that it has no jurisdiction to entertain the case before it then appropriate order can be passed by the said Court. This cannot be a ground for quashing the complaint.

##. In Re Jivandas Savchand [FB], reported in AIR 1930 Bombay 490, again the matter related to criminal breach of trust. It has been observed that it is the act itself which, lead, to an offence, apart from any other consequence and, therefore, the jurisdiction to try an offence of criminal misappropriate or criminal breach of trust is governed by S.181(2) of the Criminal Procedure Code, 1898. This will not be a principle governing the fact of the case before us.

##. In Bijoyanand Patnaik v. Mrs. K.A.A.Brinnand, reported in AIR 1970 Calcutta 110, it was a case, wherein neither entrustment nor conversion had taken place within the territorial jurisdiction of the Court where complaint was filed. Naturally, the Court had no jurisdiction to hear and decide the case. Such a disputed question of fact can be decided on appreciation of fact situation by the Court, after the complainant gets an opportunity to prove that the cause of action for filing the complaint has arisen within the jurisdiction of the Court in which the complaint has been filed. The defence will also get an equal opportunity to prove its case. The question of jurisdiction may be a mixed question of law and fact and, therefore, this Court may not entertain such a factual dispute without any evidence on record.

##. In Daityari Tripatty v. Subodh Chandra Chodhury, reported in AIR (29) 1942 Calcutta 575, again the matter related to the jurisdiction of the Court.

##. In State v. Gulabchand Swarupchand and others, reported in AIR 1962 Bombay 78. Again the matter involved question of jurisdiction.

##. In State v. Dhulaji Bavaji, reported in 1962 (3) GLR 409, the matter related to the jurisdiction of the Court since the offence involved was one punishable under Section 66(1)(b) of the Bombay Prohibition Act and, therefore, it was found that the prosecution had to prove that the offence of consuming liquor was completed within the jurisdiction of the Court concerned as the offence would take place only where the liquor has been consumed without pass or permit.

##. On the other hand, in Banwarilal Agarwal and others v. A. Suryanarayan and State, reported in 1994 Cri.L.J. 370, the Orrisa High Court has taken a view that in an offence punishable under Sections 408 and 420 of the Indian Penal Code, though there were allegations that the trial had taken place at a wrong place, no prejudice had

caused to the accused persons and there were concurrent findings of fact that the Magistrate had jurisdiction to try the case. It was found that the High Court would not interfere with the case on the question of jurisdictional aspect.

##. In Mahavir Prashad Gupta and another v. State of National Capital Territory of Delhi and others, reported in (2000) 8 Supreme Court Cases 115, it has been laid down that the power to quash a criminal complaint under Article 226 of the Constitution of India should be exercised with circumspection and only in rarest of the rare case such as where the complaint does not disclose any offence. It was a case of an offence wherein the goods were entrusted to the transporter for transporting them to another place and the transporter accepted the goods and issued lorry receipt but did not deliver the goods. It was found that the Police was obliged to register an FIR and/or to make an inquiry as to whether there was any criminal breach of trust and forgery as claimed in the complaint.

##. In Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., reported in (2000) 3 Supreme Court Cases 269, it has been recently laid down that a complaint has to be examined as a whole without going into merits of the allegations made therein. It has also been observed in it that mere fact that the offence was committed during the course of a commercial transaction by itself would not be sufficient to quash the complaint.

##. Almost similar view was adopted in Trisuns Chemical Industry v. Rajesh Agarwal and others, reported in (1999) 8 Supreme Court Cases 686,wherein, it has been observed that a criminal prosecution cannot be thwarted merely because civil proceedings are also maintainable. It has also been observed that the Magistrate taking cognizance of offence need not have territorial jurisdiction to try the case. That any Judicial Magistrate of First Class has power to take cognizance of any offence, whether committed within his jurisdiction or not. It has also been observed that quashment by High Court of complaint on the ground that Magistrate who took cognizance had no territorial jurisdiction to try that case was improper and premature. There, it has also been observed that the power of Judicial Magistrate of the First Class to take cognizance is not impaired by territorial restrictions. It has also been observed that it is an erroneous view that Magistrate taking cognizance of offence must necessarily have territorial jurisdiction to try the case as well.

##. In view of the aforesaid latest pronouncements of the Hon'ble the Supreme Court with respect to the territorial jurisdiction of the Court taking cognizance of an offence, it would be very difficult for this Court to accept the contentions of the present petitioners that the offence has not taken place within the jurisdiction of the trial Court and, therefore, the complaint should be quashed.

##. In the case of Hridaya Ranjan Pd. Verma and others v. State of Bihar and another, reported in 2000 S.O.L. Case No.2007, the Hon'ble the Supreme Court has observed that the power of quashing of criminal proceedings should be exercised very sparingly and with circumspection and that too in rarest of rate cases. The Hon'ble Supreme Court has summed up, as follows.

"(i) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirely do not prima facie constitute any offence or make out a case against the accused. (ii) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose of a cognizable offence, justifying an investigation by police officer under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code. (iii) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (iv) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. (v) Where the allegations made in the FIR or complaint are so absured and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceedings against the accused. (vi) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing is manifestly redress for the grievance of the aggrieved party. (vii) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance

on the accused and with a view to spite him due to private personal grudge."

##. In the present case, we find that the complaint regarding the offences said to have been committed by the present petitioners in both the applications show prima fiace, the existence of ingredients of the offence and when allegations are there against the petitioners that they have committed the offence, then in that event, it cannot be said that the complaint does not make out any offence. When the complaint prima faice makes out some offence against the petitioners then in that event, the complaint cannot be lightly quashed.

##. It is required to be considered here that if the Court exercising the powers of quashing the complaint, does not quash the complaint, the accused still gets an opportunity to defend his case at the trial. The accused can take up all legal and factual contentions before the trial Court including the question of territorial jurisdiction. On appreciation of fact and law involved in the case, the trial Court can adjudicate all these disputes involving law and fact. The complainant will also get an equal opportunity to produce all materials before the trial including oral and documentary evidence for the purpose of enabling the Court to appreciate the entire fact and law involved in the case. Therefore, both the sides get an equal opportunity to place their rival cases before the trial Court at the trial. On the other hand, if the complaint is quashed, the entire right of the complainant to proceed ahead with the complaint will naturally come to an end. Therefore, the Court exercising the powers of quashing criminal proceeding has to be slow and must exercise restrain in passing an order of quashing the criminal proceedings. Similarly, the Court must exercise this power very sparingly and in a rarest of rare cases.

##. On appreciation of fact and law and on appreciation of the factual allegations made in the complaint, I am of the opinion that this is not found to be a rarest of rare case wherein this Court should exercise extra ordinary powers of quashing such a complaint under Section 482 of the Code.

##. As said earlier, the learned advocate for the respondent - original complainant has argued at length that the parties had occasions to deal with transport of goods and the present petitioners have delivered the goods to the consignees only on presentment of original Airway Bills by the consignee. It has also been argued

by the learned advocate for the respondent that in the present case, the petitioners have acted dishonestly in effecting delivery of the goods to the consignee without insisting on presentment of original Airway Bills. It is also his argument that the consignee would get original Airway Bills, only when a consignee clears dues of the respondent, original complainant, through the Bank. Therefore, the act of petitioners herein was dishonest, in as much as they would not have delivered the goods without obtaining original Airway Bills from the consignee. Interestingly, the learned advocate for the petitioners did not argue that there was no oral understanding, that there was no previous contract between the parties or that the petitioners have handed over consignments to the consignee on presentment of original Airway Bill. He did not argue that there was no business usage or custom as alleged by the respondents. He, nowhere, explained as to why the consignment in question was handed over to the consignee without presentment of original Airway Bill despite the oral understanding between the parties past experience, usage, practice and custom in this filed of the business.

##. Therefore, there are reasons to believe prima facie that the allegations and averments made in the complaint when read as a whole show that prima facie case has made out against the petitioners for the offence alleged in the complaint and, therefore, there is no reason to quash the complaint exercising the power under Section 482 of the Code.

##. This is not a fit case for exercising the powers conferred by Section 482 of the Code in favour of the petitioners and, therefore, the present applications deserve to be dismissed.

##. For the foregoing reasons, the present applications filed by the different accused persons of the same criminal case are ordered to be dismissed. Interim relief granted earlier stands vacated. Rule is discharged.

[D.P.BUCH,J.]

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Learned advocate for the petitioners, at this stage, in both the matters, states that with a view to enable the petitioners to file appropriate proceedings,

to challenge the above judgment, interim relief granted earlier may be continued for a further period of 8 weeks. Learned advocate for the respondents has no objection. Therefore, the interim relief granted earlier shall stand extended for a further period of 8 weeks from today.

[D.P.BUCH,J.]